

Remarks

In view of the following remarks, Applicant respectfully requests reconsideration of the claims pending in the instant application. Claims 29-57 are pending. Claims 29-52 stand rejected. The Examiner concludes the claims 53-57 "would be allowable" (page 5 of outstanding office action). Applicant adds claims 58-61 as shown above. Support for this amendment is found on page 4 and page 10 of the specification. Below, Applicant addresses each of the issues in the order in which they appear in the Office Action mailed May 17, 2002.

The examiner requests clarification of the sequence of LERK-6 compared in Exhibit E of the 131 Declaration earlier submitted and the 184 amino acid sequence of SEQ ID NO:2 of the instant application. The first amino acid of the sequence used for the comparison of in Exhibit E is derived from the sequencing vector and is not part of the LERK-6 sequence. The polypeptide of SEQ ID NO:6 is the mature LERK-6, having 184 amino acids. The 184 amino acids of SEQ ID NO:6 does not include the stop codon, TAG. The 186 amino acid sequence of Exhibit E includes the stop codon and the first amino acid of the sequencing vector. Thus, the 2 amino acid discrepancy between SEQ ID NO:2 and Exhibit E.. This discrepancy is irrelevant to the claims in the instant application. The claims correctly claim the disclosed invention. Further, the discrepancy does not effect Exhibit E since its purpose is to demonstrate that LERK-6 of this invention is a LERK family member.

The Examiner asserts that the application does not contain a specific reference to an earlier filed prior application. By the above amendment such specific reference is not in the application.

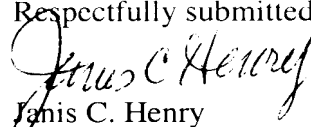
The Examiner rejects claims 29-52 under 35 U.S.C. 102(e) over Flanagan et al. U.S. 6,268,476. The instant claims are drawn to DNA encoding LERK-6 polypeptides and DNA encoding variants of the polypeptide where the variant binds hek/elk. The Examiner asserts that Flanagan TEACHES isolated nucleic acid molecules that are 100% identical to the claimed DNA. The Examiner further asserts that the 131 Declaration filed in a previous paper is insufficient to overcome the Section 102(e) rejection because such declarations are insufficient to overcome a 102(e) rejection where different inventors are claiming the same invention or obvious variants thereof. Applicant respectfully submits that Applicant's claims differ from those in the Flanagan patent and are not the same invention or obvious variants according to US Patent Office policy.. The Flanagan 6,268,476 patent claims polypeptides while the instant application presents claims to DNA. The U.S. Patent Office restriction practice is based upon the Office practice that DNA and polypeptides are separate inventions. Thus, Flanagan 6,268,476 patent discloses DNA but does not claim DNA and the 131 Declaration is sufficient to overcome the Section 102(e) rejection. Applicant repeats the

arguments in the previously filed amendment and submits that the 131 Declaration demonstrates that Applicant invented the presently claimed invention prior to the asserted effective filing date of the application that issued as US 6,268,476. Applicant respectfully requests that in view of the above remarks, the Examiner reconsider the 131 Declaration and allow the present claims.

Applicant acknowledges the Examiner remarks that claims 53-57 "would be allowable."

In view of the foregoing amendment Applicant submits that the claims in this application are in condition for allowance and a notice to the effect is respectfully requested.

Respectfully submitted,

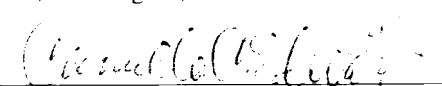

Janis C. Henry
Attorney for Applicant
Registration No. 34,347

Immunex Corporation
Law Department
51 University Street
Seattle, WA 98101
Telephone: (206) 587-0430

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231, on the date indicated below.

Date: November 18, 2002

Signed: 
Camilla C. Edwards